

REMARKS

I. Status of the Claims

New claims 15-39 have been added and are believed to be supported by the original claims and throughout the specification. New claim 26 is further believed to be supported by page 6, line 29 through page 7, line 6 of the specification. No new matter is believed to have been added. Claims 1-14 have been canceled without prejudice to their further prosecution. Claims 15-39 are active.

Applicants point out to the Examiner that the claims directed to a process for producing microcapsules (originally claims 1-9 and 14, now canceled) have been redrafted to depend from claim 15, directed to a composition of microcapsules.

II. Election of Claims Subject to Restriction Requirement

The Examiner has required restriction of the claims as follows:

Group I: Claims 1-9 and 14¹, drawn to a process for the production of microcapsules.

Group II: Claims 10-13, drawn to microcapsules.

Applicants elect **Group II** and respectfully request that the Examiner consider claims 15-28 (directed to a composition comprising microcapsules), which read on the elected group.

Applicants respectfully traverse the restriction requirement. Citing MPEP § 806.05(f), the Examiner states that a product and its process of use can be shown to be distinct if the product as claimed can be used in a *materially different* process of using that product. (emphasis added) The Examiner cites the alternate processes of coating ethylcellulose by using rotor granulation or pan coating. While not making any statement regarding the patentable distinctness of the claimed method, Applicants submit that the Examiner's arguments are insufficient because the Examiner has not shown that the alternative process is *materially different* from the claimed method. In addition, the Examiner has not shown that there would be a serious burden on the Examiner if restriction were not required.

¹ The Examiner did not include claim 14 in either of the groups identified, but Applicants believe the Examiner intended to include claim 14 in the group of process claims 1-9.

Accordingly, Applicants respectfully request that the requirement for restriction be withdrawn. In the event that the elected claims are found allowable, Applicants request rejoinder of the process claims, which read on Group I. *See* MPEP § 821.04(b).

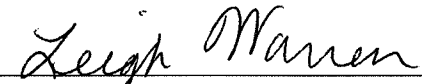
Except for issue fees payable under 37 C.F.R. 1.18, the Commissioner is hereby authorized by this paper to charge any additional fees during the entire pendency of this application including fees due under 37 C.F.R. 1.16 and 1.17 which may be required, including any required extension of time fees, or credit any overpayment to Deposit Account 50-1283. This paragraph is intended to be a **CONSTRUCTIVE PETITION FOR EXTENSION OF TIME** in accordance with 37 C.F.R. 1.136(a)(3).

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